

REMARKS

With regard to the requirement for restriction, applicants hereby provisionally elect to prosecute Group I, covering claims 1-12, and reserve the right to file a divisional application or to take such other appropriate measures as deemed necessary to protect the invention of Group II – IV.

With regard to the requirement for restriction between nucleotide sequences and protein sequences, applicants wish to pursue at least SEQ ID NO 5 and SEQ ID NO. 7. However, the Examiner has required that applicants restrict their choice to only ONE specific nucleotide SEQ. ID NO which applicants traverse vigorously. However, applicants provisionally elect SEQ ID NO 5 and traverse the Examiner's requirement for restriction to just one SEQ ID NO.

The Examiner stated that applicants must elect just one of the specific nucleotide sequences because the inventions do not relate to a single general inventive concept under PCT Rules because they allegedly lack the technical features. The Examiner further alleges that each nucleic acid does not overlap in scope with others, are not obvious variants and have materially different functions.

Applicants believe that the requirement for restriction is too rigid and that the Examiner draws too fine a line between the sequence selections. Applicants' claim 1 embodies the object of the invention such that either the structural protein "gag" or the coat protein "env" or a combination of both are used in the destruction of the feline virus. SEQ ID NO 5 and SEQ ID NO 7 are a combination of nucleotide sequences coding for the cordon-optimized sequence of "gag" and "env".

The solution to the problem to be solved here is that the feline Leucose virus can be destroyed from the "outside" (env), the "inside" (gag) and through a combination of both. Thus, the combination of SEQ ID NO 5 and SEQ ID NO. 7 serves as a basis for the necessary technical feature. Accordingly, they are within the scope of the target but not obvious variants as such they would be, if they were species, however the unity of invention lies in the combination as aforesated. Applicants submit that the combination of sequences is only one of three combinations of possible solutions and as selected should be allowed.

The instant patent application is based on an International PCT application pursuant to Chapter II, whereby during the examination of this International patent application, the unity of the invention was not disputed.

In general, unity of the invention between different groups of claims exists if these groups have a single general inventive concept. The Examiner cites MPEP 1893 (d) relating to product and process. Since applicant already elected to pursue Group I directed to the DNA construct, the rule cited by the Examiner here does not apply since it talks about product and process. Rather, applicants believe that Rule 13.2 PCT applies here that states that the unity of invention is fulfilled if the technical features that define a contribution which each of the invention in the claims makes over the prior art. In the case at hand, there is one claim in which these features are embodied; therefore a further restriction should not be required.

In view of the foregoing, applicants respectfully request that this particular restriction be withdrawn.

With respect to the election of species, as best understood, the Examiner required election between the peptides as in either claim 10 or 11 with traverse.

Based on that understanding, applicants provisionally elect the species as expressed in claim 11.

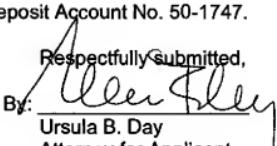
The Examiner's species restriction is unclear because on page 6 the second paragraph begins with the enumeration of 1), no second enumeration is listed and the Examiner draws together claims 10 and 11 which are not understood. Therefore, applicants can only guess what is meant by the election of species and reserve the right to submit a traverse at the time the Examiner has clarified the election.

Since applicants have fully and completely responded to the Official Action as far as possible and have made the required elections; this application is now in order for early action on the merits of claims 1-9 and 11-12.

It is noted that each named inventor of the subject matter of the instant application contributed at least to one of the claims presently on file.

With regard to claims 13-18 constituting the other groups, applicants do not waive any of their rights therefor or abandon such subject matter.

The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Deposit Account No. 50-1747.

Respectfully submitted,
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